Editor's note: 97 I.D. 109; Reconsideration denied by Order dated May 30, 1990.

MELVIN HELIT

v.

GOLD FIELDS MINING CORP.

IBLA 88-665, 88-666 Decided March 12, 1990

Appeals from separate decisions of the California State Office, Bureau of Land Management, dismissing private contests of unpatented millsites (CA CA 22514, 22515, and 22762); rejecting in whole or in part notices of location of placer mining claims (CA MC 196854 through 196860); and dismissing protest of application for patent of millsites (CA CA 20913).

Decision dismissing contests affirmed in part and affirmed in part as modified; decision dismissing protests affirmed.

1. Administrative Procedure: Standing--Rules of Practice: Appeals: Standing to Appeal

   Standing to appeal requires that an appellant be both a party to the decision appealed from and adversely affected by the decision. To be adversely affected, an appellant must have a legally cognizable interest in the land at issue.

2. Res Judicata--Rules of Practice: Appeals: Effect of

   Under the doctrine of administrative finality--the administrative counterpart of the doctrine of res judicata--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered

in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

3. Administrative Procedure: Decisions--Contests and Protests: Generally--Hearings--Millsites: Determination of Validity--Mineral Lands: Determination of Character of--Mining Claims: Mineral Lands--Res Judicata

A final decision by the Department after a contest hearing holding land to be either mineral or nonmineral in character is res judicata and conclusive between the parties regarding the status of the land at the date of the hearing, but does not preclude further consideration of the character of the land based on subsequent exploration and development.

4. Contests and Protests: Generally--Mining Claims: Contests--Rules of Practice: Private Contests

A contest complaint is required to contain a statement in clear and concise language of the facts constituting the grounds of the contest. A party seeking a hearing as to the mineral character of land which has been subject to a prior Departmental hearing must make a distinct showing of development made since the prior hearing, such as, if supported by the evidence at the hearing applied for, would clearly demonstrate that since such prior hearing mineral has been discovered in such quantities, and by such thorough work on the premises, as to overcome the effect of the previous judgment as to the character of the land.

5. Contests and Protests: Generally--Mining Claims: Contests--Rules of Practice: Private Contests

An affidavit by a contest complainant is not a substitute for an affidavit of a witness corroborating the factual allegations of the complaint as required by 43 CFR 4.450-4(c). In the absence of an affidavit of a corroborating witness, a private contest complaint is properly dismissed.

6. Administrative Authority: Generally--Administrative Procedure: Adjudication--Contests and Protests: Generally--Mining Claims: Contests

Although 30 U.S.C. §§ 29, 30 (1982) do not authorize the Department to rule on the merits of an adverse claim, it is within the Department's authority to

determine whether a document presents an adverse claim within the meaning of the statutes. The issue whether land is mineral or nonmineral in character is within the exclusive jurisdiction of the Department of the Interior and for this reason a conflict between mineral and nonmineral claimants does not raise an "adverse claim" within the meaning of the term in the statutes.

7. Mining Claims: Generally--Mining Claims: Patent

A patent may be issued to a corporation organized under the laws of the United States or any state or territory irrespective of the ownership of the stock of the corporation by persons, corporations, or associations who are not citizens of the United States.

8. Administrative Procedure: Decisions--Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Determination of Validity

When a mineral locator has filed a location certificate with BLM within 90 days of the date of the location of the claim as required by 43 U.S.C. § 1744(b) (1982), it is error for BLM to later reject the recordation of the claim. BLM's decision cannot change the fact the locator has complied with the statute. The fact the claim has been recorded with BLM, however, does not establish its validity.

APPEARANCES: Melvin Helit, Oceanside, California, pro se; William R. Marsh, Esq., and James M. King, Esq., Denver, Colorado, for Gold Fields Mining Corporation.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Melvin Helit has appealed two decisions of the California State Office, Bureau of Land Management (BLM). BLM's first decision (appeal docketed as IBLA 88-665), dated August 12, 1988, dismissed three private contests filed by Helit (CA CA 22514, 22515, 22762) against 101 millsite

claims held by Gold Fields Mining Corporation (Gold Fields). The contests were predicated on conflicts with appellant's C-ABLE 27 through 34 placer mining claims (CA MC 196266 and CA MC 196854 through CA MC 196860). BLM's second decision (appeal docketed as IBLA 88-666), dated August 16, 1988, dismissed Helit's protest against Gold Fields' mineral patent application for the millsites (CA CA 20913). The appeals have been consolidated because they concern the same parties, lands, and conflicting mining claims and millsites.

BLM dismissed the contest complaints on two grounds. First, BLM determined they did not meet the requirements of 43 CFR 4.450-1 which allows contests to be initiated "for any reason not shown by the records
of the Bureau of Land Management." BLM found that the "factors upon which the allegations are based are shown by the records of the Bureau of Land Management" because the lands involved were the subject of a previous contest brought by Gold Fields against Helit and other parties (CA 19053 and CA 19054). A hearing had been held and Administrative Law Judge Michael Morehouse had ruled that the land was nonmineral in character and that Helit's claims were invalid (Decision at 1-2). Because BLM found the issues raised by appellant's contest complaints had been resolved in the prior proceeding, BLM concluded they were "barred by the doctrines of res judicata or administrative finality and collateral estoppel" (Decision at 2). BLM also rejected the contest complaints because they were not accompanied by statements of witnesses corroborating the allegations as required by regulation. See 43 CFR 4.450-4(c).

In addition to dismissing the contests, BLM determined that "[a]ll but one of the placer mining claims involved in the existing contest complaints appear to be relocations of placer mining claims declared invalid by Judge Morehouse in the previous proceeding." (Decision at 2.) For this reason BLM rejected the notices of location Helit had filed for recordation with BLM under section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), for the C-ABLE 28, 29, 31, and 34 claims "as to those portions situated within the lands involved in a previous court proceeding." Id. The decision also rejected, in their entirety, the notices of location Helit had filed for recordation with BLM for the C-ABLE 30, 32, and 33 placer mining claims.

BLM's second decision addressed a "Statement of Adverse Claim" Helit had filed with BLM during the 60-day period following publication of notice of Gold Fields' patent application. See 30 U.S.C. §§ 29, 30 (1982). BLM determined that the document was properly treated as a protest because the essential issue raised in a conflict between placer and millsite locations is whether or not the land is mineral in character. BLM dismissed the protest because it found the issue had been resolved in Judge Morehouse's decision in the previous contest and could not be relitigated.

Appellant's notice of appeal and statement of reasons for appeal of the dismissal of the contests lists certain matters which he asserts are reasons for invalidation of the millsite claims not shown by BLM records. Appellant contends that Gold Fields has not established a right to patent

because it is a foreign corporation; that Gold Fields has not established rights senior to appellant; that Gold Fields trespassed in locating the millsite claims; and that Gold Fields has not established that the lands at issue are nonmineral in character. Appellant's arguments are set forth in the text of two documents which are incorporated by reference. One is a copy of a notice of appeal of Judge Morehouse's decision and an accompany-ing statement of reasons. The other is titled "Summary of Transcript of Proceedings/ San Diego, California/ January 20, 1987/ Volume 1 through 5/ and Comments" ("Summary") and was apparently prepared as part of the prior appeal of Judge Morehouse's decision. 1/ Appellant also asserts that the required statements of corroborating witnesses consist of his personal affidavits contained in the contest complaints. Appellant further contends that the C-ABLE claims at issue are not relocations.

Gold Fields requested and received an extension of time to file an answer to await issuance of a decision in related cases docketed before the Board as IBLA 88-524 and IBLA 89-130, cases involving the same parties and related issues. Some of the same placer claims are at issue in this appeal. Subsequently, Helit initiated a quiet title action in the U.S. District Court for the Southern District of California and the time for filing an answer with the Board was further extended pending issuance of a decision on a motion for summary judgment filed by Gold Fields in the court action. A decision in the consolidated appeals IBLA 88-524 and

1/ The appeal was dismissed by order of this Board by order dated Oct. 22, 1987, due to failure to timely file the notice of appeal in the proper office.

89-130 was issued by the Board on August 10, 1989. Melvin Helit, 110 IBLA 144 (1989). A decision on the motion for summary judgment was issued by the court on November 9, 1989. 2/

On December 11, 1989, the Board received from appellant a motion for expedited consideration. By order dated December 21, 1989, the Board granted the motion.

In its answer to appellant's statement of reasons, Gold Fields asserts that appellant's contest complaints are barred by the doctrine of res judicata or its administrative counterpart, the doctrine of administrative finality. This contention is based on the fact that appellant's placer claims, upon which standing to contest the millsites is predicated, embrace the same ground which Judge Morehouse found to be nonmineral in character in the contest proceeding to which appellant was a party. Gold Fields asserts that the contest decision has become final and was found to be binding on the parties by the U.S. District Court in its order of sum-mary judgment dated November 9, 1989. Gold Fields further argues that the appeals should be dismissed due to appellant's lack of standing. It asserts that, because appellant's C-ABLE 27 through 34 placer claims include the same land declared nonmineral in character by Judge Morehouse's decision, the claims were "void ab initio because mining claims may be located only on ground that is mineral in character" (Answer at 6). As a result, Gold

2/ On Dec. 21, 1989, appellant filed documents showing that a notice of appeal to the Ninth Circuit had been filed in the district court on Dec. 8, 1989.

Fields argues, under the rules of standing stated in Scott Burnham, 100 IBLA 94, 94 I.D. 429 (1987), Scott Burnham (On Reconsideration), 102 IBLA 363 (1988), and In re Pacific Coast Molybdenum Co., 68 IBLA 325 (1982), Helit lacks an interest in the land sufficient to give him standing to appeal (Answer at 7-8).

[1] Standing to appeal requires that an appellant establish that he was a party to the decision appealed from and, further, that he is adversely affected by the decision. In re Pacific Coast Molybdenum Co., supra at 331; see 43 CFR 4.410(a). To be adversely affected, an appellant must have a legally recognizable interest in the land at issue. Scott Burnham, supra at 119-20, 94 I.D. at 443.

Gold Fields' argument as to standing is based upon Judge Morehouse's decision. This was also the basis of the BLM decisions on appeal. Consideration of Gold Fields' argument requires analysis of the scope and effect of Judge Morehouse's decision.

The private contest heard by Judge Morehouse was filed by Gold Fields as the holder of millsite claims against Helit's conflicting placer claims identified as the C-ABLE 13, 14, 15, 23, 24, 25, and 26. For the purpose of his decision, Judge Morehouse identified the land at issue as "contestant's [Gold Fields'] millsites in the SE¼ NW¼ and S½ NE¼ of Section 7, S½ N½ of Section 8, SE¼ of Section 8 and NE¼ of Section 17" (Contest Decision at 3). The sections are in partially surveyed T. 13 S., R. 19 E., San Bernardino Meridian, Imperial County, California. Because one area

involved conflicting locations by three parties, the Judge divided the land at issue into east and west areas. Based on his review of the evidence, Judge Morehouse concluded that Gold Fields had "carried its burden in showing the land within the east and west conflict areas is nonmineral in character," adding that "the weight of the evidence in support of this conclusion is overwhelming, and there is little or no credible evidence to the contrary." (Contest Decision at 15.) He further concluded that "the seven contested placer claims which are the subject of these consolidated proceedings are found to be invalid." (Contest Decision at 16.)

The location notices for the C-ABLE 28 through 34 placer mining claims show that they were located July 19, 1987, 3 days prior to the issuance of Judge Morehouse's decision. Each location notice states that the claim consists of 80 acres and identifies the quarter section within which each claim is located. Amended notices of location for the C-ABLE 29 and 30 which were filed with BLM June 15, 1988, do not indicate a change in either the size or position of the claims. The location notice for the C-ABLE 27 states that it was located June 28, 1987, and consists of the S½ of the NE¼ of sec. 7.

Maps submitted with the notice of location of the claims when recorded with BLM and with the contest complaints and adverse claim show the positions of the claims within the quarter sections identified in the location notices. A comparison of these maps with a map filed with the location notice for the C-ABLE 27 (CA 196266) confirms the similarity of the claims before us with those previously before Judge Morehouse. The C-ABLE 28 which

occupies the S½ NW¼ of sec. 7 appears to be identical to the C-ABLE 15. The C-ABLE 29 and 30 in the S½ N½ of sec. 8 appear to be identical to the C-ABLE 13 and 14. The C-ABLE 31 and 32 in the SE¼ of sec. 8 appear to be identical to the C-ABLE 23 and 24. The C-ABLE 33 and 34 in the NE¼ of sec. 17 appear to be identical to the C-ABLE 25 and 26. Only the C-ABLE 27 does not correspond to a C-ABLE claim adjudicated in the decision; however, the land it occupies, the S½ NE¼ of sec. 7, is embraced in Gold Fields' millsites which were the basis of the contest before Judge Morehouse and this land was the subject of adjudication in the decision. Thus, Gold Fields is correct that appellant's claims encompass the same land Judge Morehouse found to be nonmineral in character. 3/

[2] Gold Fields is also correct that Judge Morehouse's decision has become final. By order of this Board dated October 22, 1987, the appeal of the decision was dismissed because it was not timely filed in the proper office and the decision became final for the Department. Melvin Helit, supra at 150. Under the doctrine of administrative finality--the administrative counterpart of the doctrine of res judicata--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice. Lloyd D. Hayes, 108 IBLA

3/ The C-ABLE 28 occupies the S½ NW¼ of sec. 7, of which only the eastern quarter-quarter section was adjudicated in Judge Morehouse's decision, apparently because Gold Fields did not have millsites in the western quarter-quarter section.

1189, 192-93 (1989); Turner Brothers, Inc. v. OSMRE, 102 IBLA 111, 120-21 1988). No such showing has been made by appellant. The finality of Judge Morehouse's decision was recognized by the order of the district court. Melvin Helit v. GFMC Exploration-California, Inc., No. 88-1100-JLI(CM), slip op. at 2 (S.D. Cal. Nov. 9, 1989).

[3] The specific issue posed by this appeal is the effect of the Administrative Law Judge's decision on appellant's subsequent claims located in 1987. A number of cases have dealt with the effect of a con-test decision on a subsequent challenge to the mineral character of a tract of public land. As a general matter, the Department has followed the rule that "a decision by the Department holding a tract of land to be either mineral or nonmineral in character will be considered conclusive up to the period covered by the hearing, but will not preclude further consideration of the character of the land based on subsequent exploration and development." Shire v. Page, 57 I.D. 252, 259-60 (1941). In Shire the Department held that "[i]n view of the previous judgment and the evidence as to the character and general formation upon which said judgment was based, the failure to supply concrete factual data supporting mere general allegations is not deemed sufficient" to justify reopening the question of the mineral character of the land. 57 I.D. at 260. 4/

The case of Gorda Gold Mining Co. v. Bauman, 52 L.D. 519 (1928), involved a petition for reconsideration of a Departmental decision

4/ The Shire decision explicitly found a lack of privity between the former contestant and subsequent mining claimant and, hence, the absence of res judicata. 57 I.D. at 259.

rendered after a hearing finding mining claims in conflict with a home-stead entry to be valid and directing a survey to segregate the claims and cancellation of the homestead entry as to the lands. The Department held the issue of the character of the land at the date of the hearing to be res judicata and declined to order any further inquiry, noting that petitioner had failed to show that exploration and development subsequent to the hearing had shown the land to be nonmineral. 52 L.D. at 521. The case of Bailey v. Molson Gold Mining Co., 43 L.D. 502 (1914), like the case at issue here, involved an appeal from dismissal of a protest against a mineral patent application. The decision stated that, as between two private parties invoking a private contest proceeding before the Department, the determination of their respective rights in a tract of land would generally be regarded as res judicata of all facts essential to support such a judgment (i.e., the mineral character of the land), but because the Department is not bound to accept such a determination of the character of the land, "such a judgment does not bar further inquiry as to the character of the tract." 43 L.D. at 503. The decision noted the Department had since adjudicated the land to be mineral in character and held that the issue should not be readjudicated "except upon a protest which sets up definite and specific facts which if established at a hearing would clearly show the land to be nonmineral." 43 L.D. at 504.

Similarly, the Department has held that a finding regarding the mineral character of land after a contest hearing between a mineral locator and nonmineral claimants at which evidence was taken could not be overcome by the mere allegation that the land contained no valuable mineral. To secure a

hearing to challenge the prior finding, it was necessary for the agricultural applicants to allege that exploration and development subsequent to the former hearing or trial had shown the land to be non-mineral or that the former decision was based upon fraud or mistake such as would justify further inquiry into the character of the land." Coleman v. McKenzie, 28 L.D. 348, 353, review denied, 29 L.D. 251, 359 (1899).

Thus, a hearing in a private contest at which evidence is taken leading to a final Departmental decision with respect to the mineral character of the land at issue is binding as res judicata between the parties to the contest as to the status of the lands at the date of the hearing. 5/ However, under Departmental case precedent, this would not preclude a showing that exploration and development since the time of the hearing have disclosed a mineral discovery sufficient to support new claim locations. In the absence of a showing of substantial evidence of mineral discovery not previously disclosed, the filing of new locations for the same ground which was the subject of a prior contest hearing which resulted in a finding that the land was nonmineral in character would leave the locator vulnerable to a charge that the claims were not located or held in good faith. See United States v. Prowell, 52 IBLA 256, 260 (1981). In the present case, the new placer claims were located within six months after the hearing but prior to the issuance of Judge Morehouse's decision. The district court ruled Helit

5/ The district court found the Administrative Law Judge's decision to be res judicata between the parties regarding the mineral character of the land at issue. Slip op. at 2-3.

could not avoid the effect of the decision "simply by relocating new claims on this land after invalidation of their prior claims." Slip op. at 3. 6/

The contest hearing was held January 20-23, 1987. The C-ABLE 27 through 34 placer mining claims were located June 28 and July 19, 1987. While the finality of the decision precludes appellant from challenging

the decision or raising any issue addressed by it, he is not precluded from asserting that evidence derived from subsequent exploration and development shows the land to be mineral in character. 7/ Thus, Judge Morehouse's decision does not necessitate a conclusion that the locations at issue were invalid because the land was nonmineral. Nor does the decision preclude the Department from rejecting the patent application for some or all of

6/ The district court cited United States v. Allen, 578 F.2d 236 (9th Cir. 1978), which addressed whether a party may, under the guise of repeated locations of invalid mining claims, use public lands primarily for residential purposes. The court held that the appellant had confused the right to explore with the right to reside and permanently occupy the land and that exploration without discovery does not confer a right to obstruct surface use. 578 F.2d at 237-38.

7/ We recognize that our analysis varies from that of the district court. The court first declined to review the contest decision and Helit's allegations as to the evidence at the hearing on the grounds it lacked jurisdiction due to Helit's failure to exhaust administrative remedies as a result of his untimely appeal. As discussed in our opinion, we reach the same result based on the doctrine of administrative finality. The court dismissed Helit's other claims for relief because it found the C-ABLE 27 through 34 placer mining claims "cover the same ground as was the subject of the private contest decision," and that the decision "precludes further litigation of the same issue by plaintiffs against Gold Fields in this court or in any other forum under the doctrine of res judicata. Robi v. Five Platters, Inc., 838 F.2d 318, 321 (9th Cir. 1988)" (Slip op. at 2-3). We agree. The court also stated that the contest decision had "conclusively resolved the status of the land described therein as between Gold Fields and plaintiffs." Id. at 3. Here our analysis differs. As analyzed in the Departmental decisions discussed above, the issue litigated and decided was the mineral character of the land as of the date of the hearing.

the millsites because it determines that the land is mineral in character. See Marvel Mining Co. v. Sinclair Oil & Gas Co., 75 I.D. 407, 423 (1968); United States v. United States Borax Co., 58 I.D. 426, 430 (1943). Hence, we conclude that appellant has standing to appeal the BLM decisions.

With respect to the decision of BLM dismissing appellant's contest complaints, we find the decision must be affirmed. Presumably, as with other private contestants, appellant's purpose was to obtain a declaration that Gold Fields' conflicting millsites are invalid, thereby eliminating the conflict and allowing Helit and his co-locators unfettered use of the ground. See 2 American Law of Mining § 50.01 (2d ed. 1984). Appellant is allowed to file a private contest action because such a procedure assists

> the Secretary of the Interior in carrying out his duties to protect the interests of the government and the public in public lands, in that by such method there may be called to the attention of the Bureau of Land Management invalid claims to title or interest in public lands, the invalidity of which does not appear on the records of the Bureau of Land Management and of which the Bureau may be without knowledge.

Duguid v. Best, 291 F.2d 235, 242 (9th Cir. 1961). For the same reason, however, a private contest complaint must assert the invalidity of a

claim based on a "reason not shown by the records of the Bureau of Land Management." 43 CFR 450-1.

[4] Pursuant to our analysis in this decision, we find that BLM was required to dismiss the complaints for a slightly different reason than stated in its decision. A contest complaint is required to contain "[a]

statement in clear and concise language of the facts constituting the grounds of contest." 43 CFR 4.450-4(a)(4). Consistent with the rule of Shire v. Page, supra, a party seeking a hearing as to the mineral character of land which has been subject to a prior Departmental hearing must make

> a distinct showing of development made since the prior hearing, such as, if supported by the evidence at the hearing applied for, would clearly demonstrate that since such prior hearing mineral has been discovered in such quantities, and by such thorough work on the premises, as to overcome the effect of the previous judgment as to the character of the land.

Mackall v. Goodsell, 24 L.D. 553, 556 (1897). Appellant's complaints fail to contain any clear and concise statement of the facts which would show that, since the prior contest, a mineral deposit has been discovered in such quantity and of sufficient quality as to overcome the decision that the land is nonmineral in character. This is a fatal shortcoming, since, in the absence of such information, the nonmineral character of the land is res judicata between appellant and Gold Fields as the district court held.

[5] BLM also rejected the contest petitions because statements of witnesses corroborating the allegations of the complaints did not accompany the documents as required by 43 CFR 4.450-4(c). In reply, appellant refers to pages of the complaints where the "statement of witness" may be found. We have examined these pages as well as the rest of the complaints. The only documents we find are affidavits by the appellant, Melvin Helit.

The regulation requires that statements of witnesses corroborate the factual allegations of the complaint. The purpose of the requirement is to assure there is evidence of the truth of the facts alleged, thereby preventing "the allowance of unjustifiable attacks against entries, thus relieving the Land Department of the consideration of speculative and unwarranted contests and entryman from the trouble and expense attendant on the defense thereof." Nemnich v. Colyar, 47 L.D. 5, 7 (1919). The complainant is not a corroborating witness and his affidavits cannot confirm the facts alleged in the complaint. Winegeart v. Price, 74 IBLA 373, 380-81, 90 I.D. 338, 342 (1983). They serve only to confirm that the allegations of the complaints were made under oath, as required by the regulations. See 43 CFR 4.450-4(a). The regulations allow summary dismissal of a complaint when it fails to meet the requirements of the regulations. 43 CFR 4.450-5(a). Accordingly, BLM properly dismissed the complaints due to the lack of corroborating statements. Wright v. Guiffre, 68 IBLA 279, 286 (1982); Lamb v. Stoffel, 36 IBLA 201, 209 (1978).

Regarding appellant's adverse claim which was treated by BLM as a protest and dismissed, we note that Gold Fields was required to post and publish notice of its application for patent to the millsites. 30 U.S.C. § 29 (1982). Appellant filed a "Statement of Adverse Claim" with BLM on July 1, 1988, within the 60 days allowed by the statute. The statutes providing for adverse claims require BLM to stay "all proceedings, except the publication of notice and making and filing of the affidavit thereof, * * * until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived." Id. § 30; see 113

43 CFR 3871.4. The party filing the adverse claim is required, "within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment" and the statute provides that failure to do so "shall be a waiver of his adverse claim." 30 U.S.C. § 30 (1982).

[6] Although the statutes providing for adverse claims do not authorize the Department to rule on their merits, John R. Meadows, 43 IBLA 35, 37 (1979), it is within the Department's authority to determine whether a document presents an adverse claim within the meaning of the statutes. Thomas v. Elling, 25 L.D. 495, 497 (1897). If the document does not present an adverse claim such as is contemplated by the statutes, BLM may take other appropriate action or, if a judicial suit has been filed, the Department
may choose to await the result. Brown Land Co. v. The Cleveland-Cliffs
Iron Co., 17 IBLA 368, 378, 81 I.D. 619, 623 (1974).

Appellant's "Statement of Adverse Claim" asserted that he was "a co-owner of the possessory right and title" to mining claims "on which valuable mineral deposits" had been discovered. BLM determined that because
the issue presented in a conflict such as this between placer locations and millsite claims is the mineral character of the land, appellant's statement could be treated as a protest. BLM was correct. The issue whether land
is mineral or nonmineral in character is within the exclusive jurisdiction of the Department of the Interior and for this reason a conflict between mineral and nonmineral claimants does not raise an "adverse claim" as

the term is used in 30 U.S.C. §§ 29, 30 (1982). See In Re Pacific Coast Molybdenum Co., supra at 329-30; Low v. Katalla Co., 40 L.D. 534, 538-40 (1912); Grand Canyon Railway Co. v. Cameron, 35 L.D. 495, 496-97 (1907). Since the "adverse claim" did not itself constitute a contest, BLM properly treated it as a protest. 8/

We also affirm the dismissal of appellant's protest for failure to state any basis upon which the protest could be upheld by BLM. Appellant has challenged the right of Gold Fields to hold the millsite claims, contending that allowing a domestic corporation to hold mining claims when it is a subsidiary of a foreign corporation is contrary to the original purposes of the citizenship provisions of the Lode Law of 1866 (Act of July 26, 1866, ch. 262, 14 Stat. 251) and the Mining Law of 1872 (Act of May 10, 1872, ch. 152, 17 Stat. 91).

[7] Appellant contends that the statutes' citizenship provisions have been misinterpreted and misapplied. As noted in In re Pacific Coast Molybdenum Co., 75 IBLA 16, 38, 90 I.D. 352, 365 (1983), since at least 1899 the practice of the Department of the Interior has been to issue patents to a corporation organized under the laws of the United States or any state or territory irrespective of the ownership of stock of the corporation by persons, corporations, or associations who are not citizens

8/ "Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances." 43 CFR 4.450-2; see 43 CFR 3872.1.

of the United States. See Clark's Pocket Quartz Mine, 27 L.D. 351 (1898). The regulations provide that the citizenship of a corporation is established by filing a certified copy of its charter or certificate of incorporation. 43 CFR 3862.2-1. On several occasions the Department has considered the issue and each time found insufficient reason to change the rule. Melvin Helit, supra at 152-53; In re Pacific Coast Molybdenum Co., 75 IBLA at 37-39, 90 I.D. at 364-65; Solicitor's Opinion, M-36738 (July 16, 1968); Instructions, 51 L.D. 62 (1925).

It is indisputable that the Department's construction of the provision allows aliens, as well as foreign corporations, to locate and hold mining claims by forming a corporation under the laws of a state or territory. See 1 American Law of Mining § 31.04[3] (2d ed. 1984). Appellant has "failed to show why this consistent interpretation, stretching over nearly a century of adjudication, should be abandoned at this late date." In re Pacific Coast Molybdenum Co., 75 IBLA at 37-39, 90 I.D. at 365; followed, Melvin Helit, supra at 152-53. We reaffirm our prior rulings in this respect.

Finally, we must consider BLM's rejection, in whole or in part, of the recordation of all but one of the notices of location for the placer claims because they "appear to be relocations of placer mining claims declared invalid by Judge Morehouse in the previous proceeding" (Decision at 2). Appellant was required to file the claims with BLM within 90 days of the date of their location by section 314(b) of FLPMA. 43 U.S.C. § 1744(b) (1982). Failure to file a claim as required by the statute is deemed to

conclusively constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 471 U.S. 84 (1985). The consequence of BLM's rejection of appellant's location notices is that appellant would not have complied with the statute and his claims would be void for that reason.

[8] The location notices are datestamped as having been received by BLM September 15 and 28, 1987. A comparison of these dates with the dates of location shows that they were filed within the time allowed by the statute. Thus, appellant complied with the law. BLM's decision cannot change the fact. Add-Ventures, Ltd., 95 IBLA 44, 50 (1986); see John D. Ketscher, 32 IBLA 235, 238 (1977). The reason stated by BLM for rejecting the location notices suggests that its conclusion was actually that the claims were invalid because they could not be located on the land addressed by Judge Morehouse's decision. If so, a decision finding the claims null and void ab initio for this reason would have been the appropriate course of action.

The fact the locations remain on file with BLM does not give appellant any rights he does not have by virtue of their validity or invalidity otherwise under the mining laws. Add-Ventures, Ltd., supra at 48; see John D. Ketscher, supra. If BLM determines that Gold Fields' millsite locations are proper and in compliance with the law, upon issuance of a patent, appellant's claims will become nullities because there is no longer any Federal land to which they can attach as locations under the mining laws.

Scott Burnham, supra at 116, 94 I.D. at 441. 9/ Accordingly, the decision dismissing appellant's contest complaints is affirmed as modified to delete the rejection of the recordation of appellant's claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision dismissing appellant's protest is affirmed and the decision dismissing appellant's contests is affirmed in part and affirmed in part as modified.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

9/ There is a longstanding rule that a mineral entry cannot be allowed for land within an existing entry so long as the latter remains of record and the prior entry must be removed before a mineral patent application can be processed. See Roos v. Altman (On Petition), 54 I.D. 47, 56-57 (1932); Walter G. Bryant, 53 I.D. 379 (1931). A BLM record of a mining location filed under 43 U.S.C. § 1744(b) (1982) is not an entry in the same sense of the term. See Scott Burnham, supra at 109-10, 94 I.D. at 437.